

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Case No. 01-80769

v.

HONORABLE DENISE PAGE HOOD

ANDREW GROSS,

Defendant.

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**ORDER REGARDING MOTION FOR MODIFICATION OF SENTENCE
AND
MOTION PURSUANT TO FEDERAL RULES OF CRIMINAL PROCEDURE 36**

This matter is before the Court on Defendant Andrew Gross' Motion for Modification of Sentence filed May 9, 2007 and Motion Pursuant to Federal Rules of Criminal Procedure 36 filed May 10, 2007. On April 17, 2002, Gross was convicted pursuant to a jury verdict of violations under 18 U.S.C. §§ 1341, 1029(a)(2), and 1028(a)(7), mail fraud, credit card fraud and identity theft before this Court.¹ On July 23, 2002, Gross was sentenced to 60 months on each mail fraud count, and 84 months on each of the credit card fraud and identity theft counts, with all terms to run concurrent to each other. The Sixth Circuit Court of Appeals affirmed the Court's Judgment in an Order filed December 23, 2003 (Case No. 02-1981).

Gross has since filed numerous post-judgment motions relating to this conviction, including two Motions to Vacate, Set Aside or Correct Sentence under 28 U.S.S. § 2255, which the Court denied in Orders filed May 30, 2003 (Case No. 03-CV-72018) and December 30, 2004 (Case No.

¹Defendant also had a criminal matter before the Honorable Bernard A. Friedman, Case No. 02-80163, for securities fraud, wherein Gross entered a plea of guilty and was sentenced to 120 months in prison, consecutive to this Court's sentence of imprisonment.

04-CV-73388). In addition, the Court has entered the following Orders in the criminal case number (01-80769): a March 21, 2003 Order denying a Motion to Correct Sentence; a September 2, 2005 Order denying Gross' various motions for downward departure and modification of sentence based on the November 1, 2001 Sentencing Guideline Amendment and calculations in his Presentence report; and a January 18, 2007 Order² denying a Motion for Reconsideration and Motion for Correction of Clerical Error under Fed. R. Crim. P. Rule 36. On March 20, 2007, the Sixth Circuit Court of Appeals entered an order finding that Gross' October 6, 2006 Notice of Appeal was untimely as to the district court's August 2, 2002 Judgment and not effective as to the district court's January 18, 2007 Order since the Notice of Appeal was filed prior to the date the January 18, 2007 Order was filed.

A review of the two most recent motions before the Court indicates that Gross is presenting no new arguments from his previously-filed motions and are essentially motions for reconsideration. The Local Rules of the Eastern District of Michigan provide that any motion for reconsideration shall be served not later than ten days after entry of such order. E.D. Mich. LR 7.1(g)(1). Local Rule 7.1(g)(3) further states:

(3) **Grounds.** Generally, and without restricting the discretion of the Court, motions for rehearing or reconsideration which merely present the same issues ruled upon by the Court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

E.D. Mich. LR 7.1(g)(3). A motion for reconsideration which presents issues already ruled upon

² The January 18, 2007 Order was mailed to Mr. Gross at the FCI-Cumberland, Maryland address and was returned to the Court as "undeliverable." It is noted that Mr. Gross' current address appears to be at FCI-Terre Haute, Indiana.

by the court, either expressly or by reasonable implication, will not be granted. *See, e.g., Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); E.D. Mich. L.R. 7.1(g).

Gross' motions, filed on May 9 and 10, 2007 (deposited in the FCI Terre Haute mailroom on May 1, 2007), are untimely since they were filed well over ten days from the Court's latest January 18, 2007 Order. Even if Gross timely filed the motions, Gross has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof, as required by Local Rule 7.1(g)(3). The two most recent motions present the same arguments regarding the sentencing guidelines and the calculations in his Presentence report, which Gross has raised in his previously-filed motions.

Accordingly,

IT IS ORDERED that the Motion for Modification of Sentence (**Docket No. 106, filed May 9, 2007**) is DENIED.

IT IS FURTHER ORDERED that the Motion for Correction or Motion Requesting Correction of Clerical Error (**Docket No. 107, filed May 10, 2007**) is DENIED.

s/ DENISE PAGE HOOD

DENISE PAGE HOOD

United States District Judge

DATED: June 4, 2007

I hereby certify that a copy of the foregoing document was served upon counsel of record and Andrew Gross, Reg. No. 28240-039, P. O. Box 33, Terre Haute, Indiana 47808 on June 4, 2007, by electronic and/or ordinary mail.

S/William F. Lewis

Case Manager